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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40 - 601
<b>Regulation title</b>	Food Stamp Program
<b>Action title</b>	Rename program to Supplemental Nutrition Assistance Program
<b>Date this document prepared</b>	February 18, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

22 VAC 40-601-50 amends the regulation to address handling pending applications for the Food Stamp Program. Federal regulations allow states an option to either deny applications after 30 days if the local department of social services is unable to process the application, or to hold the application pending for an additional 30-day period. The Department of Social Services (DSS) would like to adopt the provision to deny an application after 30 days instead of holding it pending for an additional 30-day period before disposing of it. This process would require reopening denied applications if an applicant would subsequently supply needed information to determine eligibility and benefit level after the 30<sup>th</sup> day but before the 60<sup>th</sup> day following the application date.

22 VAC 40-601-60 amends the regulation to allow an extension of food stamp transitional benefits to state-funded public assistance programs. Transitional benefits are currently limited to Temporary Assistance for Needy Families (TANF) cases. This amendment would allow transitional food stamp benefits when state-funded programs close.

This regulatory action changes all references to the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP) and food stamp benefits to SNAP benefits. The U.S. Congress enacted legislation to rename the program and adoption of the name lessens potential confusion.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Section 63.2-217 of the Code of Virginia (Code) grants authority to the State Board of Social Services (Board) to promulgate rules and regulations to operate assistance programs in Virginia. Section 271.4 of the Code of Federal Regulations delegates responsibility to administer the Food Stamp Program within a state to the agency assigned responsibility for other federally funded public assistance programs.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

DSS would like to change the method of handling applications that remain unprocessed after 30 days to reduce administrative tasks encountered by local eligibility workers. The amount of benefits households would receive or the number of eligible households will not be affected by changing the approach of processing applications.

Citizens seeking food stamp assistance must apply for benefits in the city or county where they live. Local eligibility workers normally have 30 days to process an application. Benefits are calculated from the application date so eligible households will receive a higher benefit if the application is filed early in the month. Currently, if the eligibility worker is unable to complete the processing of the application at the end of 30 days because of the applicant's failure to provide information or to take other needed actions, eligibility staff must extend the processing period by an additional 30 days. If the applicant supplies the information or takes the needed actions during the second 30-day period, benefits are prorated from the date the information is supplied. The application is denied if information is still needed after the end of the 60<sup>th</sup> day. Approximately 30% of applications that are held for the extended period are processed while the majority of the pending applications are ultimately denied because of the failure of the applicant household to provide information.

22 VAC 40-601-50 will eliminate holding the application unprocessed during the second 30-day period, as the application would be denied. Eligibility workers will be required to reopen the denied application if an applicant provides the information before the 60<sup>th</sup> day. If the household is eligible, benefits will be calculated from the date the information is provided.

22 VAC 40-601-60 will extend transitional food stamp benefits to certain state-funded cash-assistance programs. Transitional food stamp benefits is a means to provide up to five months of food stamp benefits to households leaving TANF cash assistance without requiring the household to submit additional paperwork or information. The Food, Conservation, and Energy Act (FCEA) of 2008 (Public Law 110-246) contains a provision that allows states an option to expand transitional benefits to cases with children that receive state maintenance-of-effort (MOE) funds or state funds that do not count toward the state MOE requirements. DSS would like to expand transitional benefits to include the closure of state-funded programs that count toward the TANF MOE requirement, such as the TANF Match Payment (TMP) or the Virginia Initiative for Employment not Welfare (VIEW) Transitional Payment (VTP) component, or state-funded programs that do not count toward the TANF MOE requirement, such as the General Relief Program.

The FCEA renamed the Food Stamp Program to the Supplemental Nutrition Assistance Program. This change acknowledges the transformation that has occurred in the program in the delivery of benefits. Benefits are no longer issued through paper coupons or stamps but are instead issued electronically. The FCEA does not mandate adoption of the SNAP name by states; however, adoption of the name will

lessen confusion as all references, guidance documents, and instructions provided by the U.S. Department of Agriculture will be to SNAP instead of food stamps. DSS will be phasing in the program name change gradually.

These amendments will not affect the health or safety of citizens.

Reprogramming the computer system will be needed to allow for the denial of applications on the 30<sup>th</sup> day and subsequent reopening of cases, if necessary. Guidance documents and notices will need to be revised to reflect the application processing requirements. Computer reprogramming and revisions for forms and manuals will be needed to rename the program.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

Amendment by 22 VAC 40-601-50 will allow local eligibility workers to deny food stamp applications that are being held as of the 30<sup>th</sup> day if the applicant has failed to provide information or failed to take actions needed to determine eligibility for benefits. The eligibility worker must send applicants a notice that details the actions or information needed and inform the applicant of an opportunity to cancel the denial by providing the processing actions within the next 30 days. The amount of benefits received will be calculated from the date the applicant household supplies the information or takes the actions needed. Applicants will not need to submit a new application to have the local department of social services (LDSS) reopen the case and consider any newly submitted information.

Amendment 22 VAC 40-601-60 will allow local eligibility workers to apply the transitional benefits provision to food stamp cases when a state-funded cash benefit case is closed. Currently, the transitional benefits provision applies only to households that have their TANF cash assistance benefits terminated. Transitional food stamp benefits allow eligible households to receive benefits for up to five months without a new application while the households adjust to the terminated income.

This regulatory action offers a technical revision of all references to the Food Stamp Program and food stamps to the Supplemental Nutrition Assistance Program (SNAP) and SNAP benefits.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

Federal regulations allow only two methods for processing food stamp applications if there is a delay in processing the application 30 days after the filing date. The agency may deny the application on the 30<sup>th</sup> day but reopen the case without requiring another application if the applicant household provides required information within the next 30 days; or, the state agency may send a notice on the 30<sup>th</sup> day that informs the applicant that the application is still pending and the actions needed for processing.

Since 1979, applications in Virginia have been held pending for the extended 30-day period. Changing the method potentially reduces the work activities for local workers by denying the application on the 30<sup>th</sup> day if the applicant does not complete necessary follow-up. The extended pending method requires additional action by local workers or an automatic denial by a system's denial on the 60<sup>th</sup> day.

Until the passage of the FCEA in June 2008, federal regulations allowed states to offer transitional food stamp benefits only to households when their TANF eligibility is terminated. Federal regulations now allow states to offer transitional food stamp benefits to households with children who lose their eligibility for state-funded cash programs. In many instances, the state-funded programs in Virginia are designed to meet the state's obligations for receiving the TANF block grant. Expansion of the transitional benefits will not cause a significant shift of work activities for local workers. This expansion will essentially affect the same client population.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

DSS is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Celestine Jackson, Division of Benefit Programs, Virginia Department of Social Services, 7 North Eighth Street, Richmond, Virginia 23219. The telephone number is (804) 726-7376 and the fax number is (804) 726-7356. The email address is celestine.jackson@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

DSS previously received comments on 22 VAC 40-601-50. Comments from local eligibility workers and supervisors were posted in support of the application processing change.

A public hearing will not be held.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

DSS has sought guidance from representatives of the 30 largest LDSS in Virginia on whether to pursue the changes described in these amendments. Guidance was also sought from a subcommittee of the Benefit Programs Organization (BPRO) of Virginia, an affiliate of the Virginia League of Social Services Executives, which is open to local eligibility workers and supervisors of every locality. BPRO currently has approximately 1000 members. DSS is committed to using the participatory approach in the development of the proposal.

## Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The regulations and name change do not strengthen or erode the nurturing relationship between parents and their children. The regulations and name change also do not alter the rights of parents to direct the education or supervision of children. The regulations neither encourage nor discourage economic self-sufficiency or self-pride nor does it alter responsibility for oneself or family or affect marital commitment.

The application processing regulation does not change the standards for determining which households are eligible for food stamp benefits and, therefore, should not alter disposable family income. However, expanding transitional food stamp benefits to additional households will affect households' disposable income by allowing households to continue to receive food stamp benefits once cash programs have ended. The amount of benefits a household receives helps to supplement the amount of money available for food purchases.

The application processing regulation encourages personal responsibility. Applicant households receive prorated benefits based on the date the application is filed. Households will also receive benefits for the month of application if the client provides information within 30 days of the filing date. If the household delays submitting information or taking required actions until after the 30<sup>th</sup> day, the household loses entitlement to benefits for the application month. The impact of the regulation is minimized by allowing the household an opportunity to submit information after the application has been denied as long as it is within 60 days of the original application date. Benefits will be calculated based on the date the information is submitted. There is no requirement to file another application unless the information is provided after the 60<sup>th</sup> day.